

FILED
GREAT FALLS DIV.

'06 JUN 12 PM 1 35

PATRICK E. DUFFY, CLERK

IN THE UNITED STATES DISTRICT COURT

DEPUTY CLERK

FOR THE DISTRICT OF MONTANA

BUTTE DIVISION

MARTY A. BOSCH,

Plaintiff,

vs.

JO ANNE B. BARNHART,
Commissioner of Social Security,

Defendant.

No. CV 05-43-BU-SEH

ORDER

United States Magistrate Judge Carolyn S. Ostby entered her Findings and Recommendation¹ on April 24, 2006. Plaintiff filed objections on May 12, 2006. The Court reviews *de novo* findings and recommendation to which objection is made. 28 U.S.C. § 636(b)(1).

Judge Ostby found that the Administrative Law Judge (ALJ) committed error in finding that Plaintiff had no medically determinable impairment. Nonetheless, Judge Ostby found that the ALJ's error was harmless as the evidence substantially supported the ALJ's findings as to the severity of Plaintiff's impairment, Plaintiff's credibility, and opinions of his treating physicians. Judge Ostby recommended that Plaintiff's Motion for Summary Judgment be denied and that the

¹ Docket No. 12.

Commissioner's Cross-Motion for Summary Judgement be granted.

Plaintiff objects to Judge Ostby's findings that, although Plaintiff suffered a medically determinable impairment, it was reasonable for the ALJ to conclude that Plaintiff's condition did not interfere with his functioning to such a degree that he was disabled under the Act. The Court agrees with Judge Ostby. Her findings are supported by substantial credible evidence.

Plaintiff's other objections ask the Court to address issues that were addressed by Judge Ostby or to reweigh the medical evidence to arrive at a conclusion different from the ALJ. However, where "the evidence is susceptible to more than one rational interpretation," the Court must uphold the ALJ's interpretation. Sandgate v. Chater, 108 F.3d 978, 980 (9th Cir. 1997). Here, the evidence as a whole is reasonably susceptible to the ALJ's interpretation.

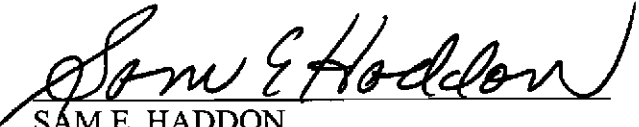
Accordingly, after *de novo* review of the record, I adopt in full the Findings and Recommendation of Judge Ostby.

ORDERED:

1. Plaintiff's Motion for Summary Judgment² is DENIED.
2. The Commissioner's Cross-Motion for Summary Judgment³ is GRANTED.

The Clerk of Court is directed to enter judgment accordingly.

DATED this 12th day of June, 2006.


SAM E. HADDON
United States District Judge

²Docket No. 7.

³Docket No. 8.